

fact sheet

employment standards act

DOMESTIC WORKERS

What is the purpose of the Employment Standards Act, 2000 (ESA)?

The ESA sets out the rights and responsibilities of both employees and employers in Ontario workplaces.

What employees and employers are not covered by the ESA?

Most employees and employers in Ontario are covered by the ESA. However, the ESA does **not** apply to certain employees and employers, including:

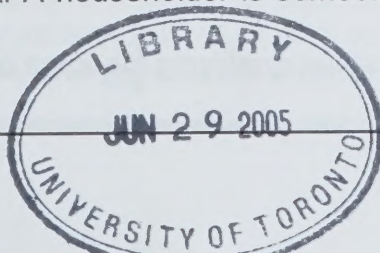
- Those in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work in a work experience program authorized by a school board, college of applied arts and technology, or university
- People who do community participation under the Ontario Works Act, 1997
- Police officers (except the Lie Detectors part of the ESA, which *does* apply)
- Inmates taking part in work programs, or people who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the ESA.

For a complete listing of other job categories not governed by the ESA, please check the ESA and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the ESA.

What are domestic workers?

Domestic workers are employed directly by householders, and not by a business or agency. An employee who is hired by a business, agency or any person other than the householder to perform homemaking services for a householder is classified as a 'homemaker' and subject to special rules and exemptions under the ESA. A householder is someone who owns or rents the home where the domestic work is done.



Domestic workers are hired to work in a private home. They do things such as housekeeping, or provide care, supervision or personal assistance to children or people who are elderly, ill or disabled.

Domestic workers have the same rights under the ESA whether they work part-time or full-time, and whether they live in or out of their employer's home.

A sitter who provides occasional, short-term care, supervision or personal assistance to children is not considered a domestic worker. Neither is someone who is employed by an agency to work in a private home.

Does the ESA cover domestic workers?

Yes. Domestic workers have the same rights as other employees in Ontario workplaces under the ESA.

In the past, 'domestic servants' were exempt from a number of parts of the employment standards laws, while 'domestics' were exempt from others. There is no longer a distinction between a domestic and a domestic servant.

What rights do domestic workers have under the ESA?

The ESA contains rules on the following key subjects that apply to most employees in Ontario, including domestic workers:

- emergency leave
- equal pay for equal work
- family medical leave
- hours of work protections (e.g., maximum hours of work, daily and weekly/biweekly rest periods)
- minimum wage
- overtime pay
- pregnancy and parental leave
- public holidays
- regular payment of wages
- severance pay
- termination notice and/or pay in lieu of notice
- vacations.

Note: There are rules about qualifying for some of the ESA protections listed above.

This fact sheet provides a brief overview of key employee rights relating to hours of work, minimum wage, overtime, public holidays and vacations.

For further details, see other fact sheets in this series, listed in *Need More Information?* at the end of this document.

What is the minimum wage rate for domestic workers?

The **general minimum wage** rate applies to domestic workers except to certain students.

Students under the age of 18:

- who work no more than 28 hours a week when school is in session, or
- who work during a school holiday (for example, March break, Christmas break, summer holidays)

are entitled to the **student minimum wage**. Students who work **more** than 28 hours a week when school is in session are entitled to the general minimum wage.

Minimum Wage Rate	January 1995	February 1, 2004	February 1, 2005	February 1, 2006	February 1, 2007
General Minimum Wage	\$6.85 per hour	\$7.15 per hour	\$7.45 per hour	\$7.75 per hour	\$8.00 per hour
Student Minimum Wage For students under 18 and working not more than 28 hours per week or working on a school holiday	\$6.40 per hour	\$6.70 per hour	\$6.95 per hour	\$7.25 per hour	\$7.50 per hour

Can an employer take into account the provision of room and meals to a domestic worker when calculating minimum wage?

Yes, but there are limits. Room and/or meals (board) shall not be deemed to have been paid as wages unless the employee has received the meals or occupied the room.

An employee's gross pay, before any deductions are made for such things as Canada Pension Plan (CPP), Employment Insurance (EI) and income tax, must add up to at least the minimum wage for all hours worked. However, the ESA and regulations provide that certain amounts are

deemed to have been paid if the employer provides the employee with room or board or both. The amounts that an employer is deemed to have paid for room or board or both are set out below:

Room: weekly

-- private	\$31.70
-- non-private	\$0.00*

An employer may only deem the provision of room and meals (board) as payment of wages to the employee where the room is reasonably furnished, reasonably fit for human habitation, supplied with clean bed linen and towels and is reasonably accessible to proper toilet and wash basin facilities.

Meals

-- each meal	\$2.55
-- weekly maximum	\$53.55

Room and meals (board): weekly

-- private room	\$85.25
-- non-private	\$53.55*

* These amounts apply only to domestic workers.

Where the employee is paid minimum wage and has been provided with room and/or board, the employer is deemed to have paid the employee the amount allowed for room and/or board. The employer must therefore pay the employee (before deductions for such things as CPP, EI or income tax) the difference between the minimum wage for all hours worked and the amount deemed to have been paid for room and/or board.

Example 1: Week of April 5-11, 2004 (General minimum wage rate = \$7.15/hr)

A domestic worker is provided with a private room and three meals a day. The employee worked 40 hours in the week at the minimum wage rate of \$7.15 an hour.

The employee's gross wages are \$286.00 (40 hours times \$7.15 per hour).

The maximum weekly room and board deduction the employer is allowed to make is \$85.25 (see amounts listed above).

Result: In this example the employee's pay (before deductions for such things as CPP, EI or income tax) is \$200.75 (\$286.00 minus \$85.25).

Example 2: Week of March 7–13, 2005 (General minimum wage rate = \$7.45/hr)

A domestic worker is provided with a private room and three meals a day. The employee worked 40 hours in the week at the minimum wage rate of \$7.45 an hour.

The employee's gross wages are \$298.00 (40 hours times \$7.45 per hour).

The maximum weekly room and board deduction the employer is allowed to make is \$85.25 (see amounts listed above).

Result: In this example the employee's pay (before deductions for such things as CPP, EI or income tax) is \$212.75 (\$298.00 minus \$85.25).

Do domestic workers get overtime pay?

For most employees, including domestic workers, overtime begins after they have worked 44 hours in a work week. After that time, they must receive overtime pay. (See the chart in the "How are You Covered by the ESA?" Fact Sheet for jobs where there are exceptions to the usual overtime rules.)

Overtime pay is at least 1½ times the employee's regular rate of pay. (This is often called "time and a half.")

An employee and an employer can agree in writing that the employee will receive paid time off work instead of overtime pay. In this case, the employee must be given 1½ hours of paid time off work for each hour of overtime worked. The paid time off must be taken within three months of the week in which it was earned or, if the employee agrees in writing, within 12 months. If an employee's job ends before he or she has taken the paid time off, the employee must receive overtime pay no later than seven days after the date the employment ended, or on what would have been the employee's next payday, whichever is later.

Overtime pay is calculated on a weekly basis. However, if there is an averaging agreement between the employee and employer and an approval from the Director of Employment Standards, an employee's hours of work may be averaged over a period of two weeks or more for the purposes of calculating overtime pay.

Note: If certain conditions are met, an employer may average hours for overtime purposes **before** an approval is received from the Director of Employment Standards.

For further information see the "Hours of Work & Overtime" Fact Sheet.

What happens with agreements to average hours for overtime purposes that were in place before the law changed on March 1, 2005?

Prior to March 1, 2005, employees and employers could enter into averaging agreements for the purposes of determining overtime entitlements but only agreements to average over periods of four weeks or longer required the approval of the Director of Employment Standards. Averaging agreements entered into under the law as it read before March 1, 2005 and that have not expired or been revoked continue to be valid agreements on and after March 1, 2005. However, as of that

date, employers with overtime averaging agreements must obtain an averaging approval from the Director of Employment Standards. (Approvals given before March 1, 2005 for averaging agreements for four weeks or longer, will be terminated as of February 28, 2005 and a "new" approval is required.)

What are the maximum hours of work for domestic employees?

For most employees, including domestic workers, the maximum number of hours they can be required to work is:

- eight hours a day
- or*
- the number of hours in an employer's established regular work day that is more than eight hours
- and*
- 48 hours a week.

These hours of work maximums can be exceeded by written agreement between the employee and employer. However, an agreement to work more than 48 hours a week is not valid unless, prior to making the agreement, the employer gives the employee the **Information Sheet About Hours of Work and Overtime Pay** prepared by the Ministry of Labour's Director of Employment Standards that describes the hours of work and overtime rules in the ESA. Generally, the employer must also obtain an approval from the Director of Employment Standards before employees may work more than 48 hours in a work week. However, if certain conditions are met, the employee may work those excess hours to a maximum of 60 hours per week **before** the approval from the Director is actually received. See the "Hours of Work & Overtime" Fact Sheet for further information.

Generally, an agreement to work excess daily or weekly hours can be cancelled with two weeks' written notice by the employee and reasonable notice by the employer. For further details see the "Hours of Work & Overtime" Fact Sheet.

What happens with agreements to work excess daily and weekly hours that were in place before the law changed on March 1, 2005?

Prior to March 1, 2005, employees and employers could agree to work excess daily and weekly hours up to 60 hours per week and with the approval of the Director of Employment Standards could agree to work more than 60 hours per week.

Daily excess hours agreements entered into before March 1, 2005 continue to be valid agreements but the employer is required to provide the employee (if he or she is not represented by a union) with the **Information Sheet About Hours of Work and Overtime Pay** prepared by the Director of Employment Standards no later than June 1, 2005.

All excess weekly hours agreements that were entered into under the law as it applied before March 1, 2005 continue to be valid agreements subject to the requirement that the employer

provide the employee (if he or she is not represented by a union) with the **Information Sheet About Hours of Work and Overtime Pay** prepared by the Director of Employment Standards no later than June 1, 2005. However, as of March 1, 2005 any Director's approval obtained for an agreement entered into prior to that date ceases to have any effect. As a result, an employer who has an agreement to work more than 60 hours per work week with an employee entered into prior to March 1, 2005 is required to obtain a "new" approval from the Director of Employment Standards.

What hours free from work are domestic workers entitled to?

Most employees, including domestic workers, are entitled to a certain number of hours free from having to work.

Daily

An employee must receive at least 11 consecutive hours off work each day.

This employment standard cannot be altered by a written agreement between the employer and employee. It applies even if:

- the employer and the employee have agreed in writing that the employee will work excess daily hours, or
- the employer has established a regular work day that is longer than eight hours.

However, this rule doesn't apply to employees who are on call and are called in during a period when they wouldn't normally be working.

Between shifts

Employees must receive at least eight hours off work between shifts.

This requirement doesn't apply if the total time worked on both shifts is not more than 13 hours. For example, a domestic worker working a split shift or back-to-back shifts in a home wouldn't need to receive eight hours off between shifts as long as the total time worked on the two shifts did not exceed 13 hours.

An employer and employee can also agree in writing that the employee will receive less than eight hours off work between shifts.

Weekly or Biweekly

Employees must receive at least:

- 24 consecutive hours off work in each work week, or
- 48 consecutive hours off work in every period of two consecutive work weeks.

This requirement *cannot* be altered by written agreement between the employer and employee.

What eating periods and breaks are domestic workers entitled to?

An employee must not work for more than five consecutive hours without getting a 30-minute eating period (meal break) free from work. However, if the employer and employee agree, the eating period may be taken as two shorter eating periods within every five hour period. *Together* these meal breaks must total at least 30 minutes. This agreement can be oral or in writing.

Meal breaks are *unpaid* unless the employee's employment contract requires payment. Even if the employer pays for meal breaks, the employee must be free from work.

Meal breaks, whether *paid* or *unpaid*, aren't considered hours of work, and aren't counted toward overtime.

Employers don't have to give employees "coffee" breaks or any other kind of break other than meal breaks.

If employees are required to remain at the workplace during a coffee break or other type of break other than an eating period, this time is deemed to be hours of work for the purposes of determining whether there is compliance with the minimum wages, payment of wages, hours of work and overtime provisions of the ESA. If an employee is free to leave the workplace during the coffee break or other type of break, this time is not considered to be hours of work under the ESA.

Do domestic workers get public holidays off?

Like most employees, domestic workers who qualify are entitled to take public holidays off work and be paid public holiday pay. Or they can agree in writing to work on the holiday, and the employer must pay the domestic worker wages at his or her regular rate for the hours worked on the public holiday, and give the employee a substitute day off with public holiday pay. However, if the employer and employee agree in writing, the employee is entitled to public holiday pay for the day plus premium pay of at least 1½ times his or her regular rate for each hour worked on the public holiday.

Domestic workers qualify for public holiday entitlements unless they:

- fail to work all of their last regularly scheduled shift before or first regularly scheduled shift after the public holiday without reasonable cause*.

or

- fail without reasonable cause* to work their entire shift on the public holiday if they agreed to work that day.

* Employees are generally considered to have "reasonable cause" for missing work when something beyond their control—such as illness, for example—prevents them from working.

Note: Most employees who don't qualify for public holiday entitlements would be entitled to be paid premium pay (time and a half) for every hour they work on the holiday.

Domestic workers may be qualified for public holidays whether they are part-time, full-time, permanent or on a defined term contract or students. It doesn't matter how recently employees were hired, or how many days they worked before the public holiday. [Note however that there are occupations and employees to whom the public holidays part of the ESA does not apply. For more information, please see the "How Are You Covered by the ESA?" and "Public Holidays" Fact Sheets.]

Do domestic workers get vacations?

Most employees, including domestic workers, are eligible for a minimum of two weeks of vacation with pay after each 12 months of employment, starting from the date they are hired.

If the employer establishes a 12-month vacation entitlement year that does not start on the anniversary date of the employee's hire, the employee is also entitled to a pro-rated amount of vacation with pay for the period (stub period) before the 12-month vacation entitlement year begins.

Vacation pay is calculated as at least four per cent of the employee's "gross" wages (excluding vacation pay and before any deductions, including room and board) earned in the period for which the vacation is being given.

Employees who do not complete either the stub period or the 12-month vacation entitlement year don't qualify for vacation time. However, employees earn vacation pay for every hour worked, so they will be entitled to four per cent of the wages they have earned as vacation pay.

Vacation pay is due before an employee takes his or her vacation, except when:

- the employer pays an employee's wages by direct deposit, in which case it is due on or before the payday for the period in which the vacation falls,
- vacation time is not taken in complete weeks, in which case it is due on or before the payday for the period in which the vacation falls,
- the employee has agreed in writing to receive vacation pay on his or her paycheque as it accumulates, in which case the vacation pay earned in each pay period is due on the pay day for that pay period, or
- the employee has agreed in writing to receive vacation pay at any other time.

For further details, including information about when and how vacation may be taken, see the "Vacation" Fact Sheet.

What information must an employer give a domestic worker?

Domestic workers must get information in writing about their jobs from their employers.

This written information *must* include:

- the regular hours of work

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- the time the work day starts and finishes
 - the hourly rate of pay.

Domestic workers, like other employees, must receive a written wage statement regarding each pay period, on or before the employee's payday.

The written wage statement must set out:

- the pay period for which the wages are being paid
- the wage rate, if there is one
- the gross amount of wages and (unless the employee is given the information in some other manner, such as in an employment contract) how the gross wages were calculated
- the amount and purpose of each deduction from the wages
- any amounts that were deemed to have been paid as wages to the employee as room or board or both
- the net amount of wages.

The employee must be able to keep this information separate from his or her cheque.

Vacation Information Statements

If the employee has agreed to the payment of accrued vacation pay on each pay day, the amount of vacation pay paid must be set out separately from the other information on the wage statement **or** it can be provided on a separate statement.

In all other cases, the employer is required to provide employees with at least one statement providing information about vacation time and pay for each completed vacation entitlement year or stub period, on the written request of the employee. See the "Vacation" Fact Sheet.

What kind of information must employers keep?

All employers in Ontario, including anyone who employs domestic workers, must keep written records about each person they hire.

Employee records may be retained either by employers or by someone else on their behalf, but must be readily available for inspection. The period of retention varies depending on the information. For example, the employee's name, address and starting date must be retained for three years after the employee ceases to be employed. The number of hours the employee worked in each day and week must be retained for three years after the day or week in question.

Each employee's written record must contain:

- the employee's name, address and starting date of employment
- the date of birth if the employee is a student under 18 years of age
- hours worked by the employee each day and week (see *Exception to the rule: hours of work records* below)

Note: It is suggested that employees also keep a record of the hours they work each day.

- information contained in the employee's wage statements
- all documents relating to pregnancy, parental or emergency leave
- the vacation time earned since the date of hire but not taken before the start of the vacation entitlement year
- the vacation time earned during the vacation entitlement year (or stub period, if the employer establishes an alternative vacation entitlement year)
- the vacation time taken (if any) during the vacation entitlement year (or stub period)
- the balance of vacation time remaining at the end of the vacation entitlement year (or stub period)
- the vacation pay paid during the vacation entitlement year (or stub period) and how that vacation pay was calculated.

Note: An employee is entitled to information about his or her vacation time and pay entitlement once per year, on written request to the employer. See the "Vacation" Fact Sheet for more details.

Exception to the rule: hours of work records

If a domestic worker receives a fixed salary for each pay period, and the salary doesn't change unless the domestic worker works overtime, the employer is only required to record:

- the employee's hours in excess of those hours in the employee's regular work week, and
- the number of hours in excess of eight per day—or in excess of the hours in the employee's regular work day, if that's more than eight hours.

What if the employer does not follow the ESA?

If an employee thinks the employer is not complying with the ESA, he or she can call or visit the nearest Ministry of Labour office to discuss a particular situation or to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer—including an order to comply with the ESA. The Ministry has a number of options to enforce the ESA, including requesting voluntary compliance, issuing an order to pay wages, an order to comply, an order to compensate, an order to reinstate and/or a notice of contravention, or issuing a ticket or otherwise prosecuting the employer under the Provincial Offences Act.

Important Facts for Employers:

Under Federal law, *all* employers must:

- register with Canada Revenue Agency and follow its rules
- get an employer number
- deduct and send required payroll deductions to Canada Revenue Agency.

For more information, please contact Canada Revenue Agency. The telephone number is in the government blue pages of your telephone directory, under "Taxes."

Under Ontario law, anyone who employs a full-time domestic worker must register with the Workplace Safety and Insurance Board (WSIB).

Contact WSIB at:

Telephone: 416-344-1000 in the Greater Toronto area or 1-800-387-0750 in the rest of the province. For TTY phone 1-800-387-0050.

For immigration concerns:

Please contact your nearest Citizenship and Immigration Canada office. The telephone number and address are in the government blue pages of your telephone directory under "Citizenship and Immigration."

This Fact Sheet provides general information about domestic workers as set out in the Employment Standards Act, 2000 (ESA) and its regulations. For complete information, please refer to the ESA and the regulations.

Need More Information?

If you have questions about the Employment Standards Act, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160 or 1-800-531-5551, or visit a Ministry of Labour office or Government Information Centre in person.

Here's how you can get written publications about the Employment Standards Act:

- Ministry of Labour website: www.gov.on.ca/lab
- Ministry of Labour Publications Sales unit: 1-800-809-4731

ESA Fact Sheets are available on the following subjects:

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| <input type="checkbox"/> Agricultural Workers | <input type="checkbox"/> Minimum Wage |
| <input type="checkbox"/> Domestic Workers | <input type="checkbox"/> Pregnancy Leave & Parental Leave |
| <input type="checkbox"/> Emergency Leave | <input type="checkbox"/> Public Holidays |
| <input type="checkbox"/> Family Medical Leave | <input type="checkbox"/> Retail Workers |
| <input type="checkbox"/> Frequently Asked Questions | <input type="checkbox"/> Role of the Ministry of Labour |
| <input type="checkbox"/> Homeworkers | <input type="checkbox"/> Termination of Employment & Severance Pay |
| <input type="checkbox"/> Hours of Work & Overtime | <input type="checkbox"/> Vacation |
| <input type="checkbox"/> How Are You Covered by the ESA? | <input type="checkbox"/> What Young Workers Should Know |
| <input type="checkbox"/> How to File a Claim | |

This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the ESA, please refer to the Employment Standards Act, 2000 (ESA) and regulations.

Please call the Employment Standards Information Centre in the greater Toronto area at 416-326-7160, or toll-free outside Toronto at 1-800-531-5551.

Information on the ESA can also be found at the Employment Standards Act section of the Ministry of Labour's website: www.gov.on.ca/lab. You can order copies of the ESA and related information materials from:

- the Ministry of Labour's Publication Sales Unit at 1-800-809-4731;
- the Ontario government E-Laws website at www.e-laws.gov.on.ca or,
- Publications Ontario, 1-800-668-9938; hearing impaired TTY 1-800-268-7095.



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